

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK R. AIELLO,
Debtor/Appellant,
v.
JOHN CONNOLLY IV,
Appellee.

CIV-S-05-00094 DFL PAN

MEMORANDUM OF OPINION
AND ORDER

Frank Aiello ("Aiello") appeals the bankruptcy court's November 8, 2004, decision to dismiss this adversary action arising from Aiello's bankruptcy proceedings. Aiello filed a notice of appeal on November 22, 2004. On February 4, 2005, appellee John Connolly ("Connolly"), the trustee, moved to dismiss the appeal for lack of jurisdiction. On June 22, this court issued an order to show cause why the case should not be dismissed for failure to perfect the appeal.

1 This court lacks jurisdiction because Aiello did not file a
2 timely notice of appeal. Under Rule 8002(a), a party has 10 days
3 to file a notice of appeal. Aiello did not file his notice until
4 14 days had passed.¹ Although he asserted that the time limit
5 should have been extended under Rule 8002(c)(2) because his delay
6 was due to excusable neglect, this assertion was also untimely.

7 Because the time limit under Rule 8002 is jurisdictional,
8 this court lost jurisdiction when Aiello failed to timely file a
9 notice of appeal or seek an extension. See In re Souza, 792 F.2d
10 855, 857 (9th Cir. 1986) (holding that the 10 day limit is
11 jurisdictional, and therefore strictly construed). Aiello's
12 appeal is, therefore, DISMISSED for lack of jurisdiction.

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14 IT IS SO ORDERED.

15 Dated: August 4, 2005.

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18 /s/ David F. Levi
19 DAVID F. LEVI
20 United States District Judge
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25 ¹ The time limit is computed according to Rule 9006(a),
26 which does not exclude weekends or holidays. If the final day
falls on a weekend or holiday, the deadline is shifted to the
next work day. November 18, 2004, 10 days from the issuance of
the final order, was neither a weekend nor a holiday.